

1 **ARIZONA DEPARTMENT OF FINANCIAL INSTITUTIONS**

2 In the Matter of the Unlicensed Activity of:

No. 06F-BD 089

-SBD

3 **GUISHARD, WILBURN & SHORTS, L.L.C.**
4 **AND ALLEN PENDERGRASS, PRESIDENT**
5 175 CARNEGIE PLACE, SUITE 115
6 FAYETTEVILLE, GA 30214

**ORDER TO CEASE AND DESIST;
NOTICE OF OPPORTUNITY FOR
HEARING; CONSENT TO ENTRY OF
ORDER**

Respondents.

7 The Superintendent of Financial Institutions for the State of Arizona (the "Superintendent"),
8 makes the following Findings of Fact and Conclusions of Law and enters the following Order
9 pursuant to Arizona Revised Statutes ("A.R.S.") § 6-137.

10 Pursuant to Titles 6 and 41 of the Arizona Revised Statutes and Title 20, Chapter 4 of the
11 Arizona Administrative Code ("A.A.C."), Respondents are hereby notified that they are entitled to a
12 hearing to contest the allegations set forth in this Order. The Request for Hearing shall be filed with
13 the Arizona Department of Financial Institutions (the "Department") pursuant to A.R.S. § 6-137(D)
14 within **thirty (30) days** of service of this Order and shall identify with specificity the action or order
15 for which review is sought in accordance with A.R.S. § 41-1092.03(B).

16 Pursuant to A.R.S. §§ 41-1092.01(D) and 41-1092.03(B), any person may appear on his or
17 her own behalf or by counsel. If Respondents are represented by counsel, the information required
18 by A.R.S. § 41-1092.03(B) shall be included in the Request for Hearing. Upon the filing of a
19 Request for Hearing, the Department shall issue a Notice of Hearing scheduling the matter for
20 hearing in accordance with A.R.S. § 41-1092.05. **Persons with disabilities may request**
21 **reasonable accommodations such as interpreters, alternative formats, or assistance with**
22 **physical accessibility.** Requests for special accommodations must be made as early as possible to
23 allow time to arrange the accommodations. If accommodations are required, call the Office of
24 Administrative Hearings at (602) 542-9826.

25 If Respondents request a hearing, a request may also be made for an Informal Settlement
26

1 Conference by filing a written request no later than **twenty (20) days** before the scheduled hearing.
2 The conference will be held within **fifteen (15) days** after receipt of your request. If an Informal
3 Settlement Conference is requested, a person with the authority to act on behalf of the Department
4 will be present (the "Department Representative"). Please note that in requesting an Informal
5 Settlement Conference, Respondents waive any right to object to the participation of the Department
6 Representative in the final administrative decision of this matter, if it is not settled. In addition, any
7 written or oral statement made by Respondents at such informal settlement conference, including
8 written documentation created or expressed solely for purposes of settlement negotiations, are
9 inadmissible in any subsequent administrative hearing. (*See* A.R.S. § 41-1092.06 for rules regarding
10 informal settlement conferences.) Conversely, any written or oral statement made by Respondents
11 outside an Informal Settlement Conference is not barred from being admitted by the Department in
12 any subsequent hearing.

13 If Respondents do not request a hearing to contest the allegations set forth below, or if after
14 hearing the Superintendent affirms the following Findings of Fact and Conclusions of Law, the
15 Superintendent may affirm her Order commanding Respondents to cease and desist their illegal
16 actions and to take affirmative action to correct the conditions created by the violative conduct
17 pursuant to A.R.S. § 6-137 and to pay a civil money penalty pursuant to A.R.S. § 6-132.

18 **FINDINGS OF FACT**

- 19 1. Respondent Guishard, Wilburn & Shorts, L.L.C. ("GWS") is an Arizona limited liability
20 company that is not and was not, at any time material herein, authorized to transact business
21 in Arizona as a collection agency within the meaning of A.R.S. §§ 32-1001 *et seq.* The
22 nature of GWS' business is that of soliciting claims for collection and collection of claims
23 owed, due, or asserted to be owed or due within the meaning of A.R.S. § 32-1001(A)(2)(a).
- 24 2. Respondent Allen Pendergrass ("Mr. Pendergrass") is the President of GWS and is not and
25 was not, at any time material herein, authorized to transact business in Arizona as a
26 collection agency within the meaning of A.R.S. §§ 32-1001 *et seq.*

- 1 3. GWS and Mr. Pendergrass are not exempt from licensure as a collection agency within the
2 meaning of A.R.S. § 32-1004(A).
- 3 4. Three (3) Arizona residents filed complaints with the State Bar of Arizona against GWS.
4 These complaints were forwarded to the Department who subsequently faxed them to GWS
5 who has not responded to the complaints as of this date.
- 6 5. On April 22, 2005, the State Bar of Arizona sent GWS and Steve Rodgers ("Mr. Rodgers"),
7 Vice President of GWS, a letter requesting that he cease any activity defined as the practice
8 of law in Arizona. The State Bar of Arizona was advised that Mr. Rodgers engaged in
9 conduct that may violate Arizona Supreme Court Rule 31(b), which states, "no person shall
10 practice law in this state or represent in any way that he or she may practice law in this state
11 unless the person is an active member of the state bar ..." According to the State Bar of
12 Arizona's records, Mr. Rodgers has never been admitted to the State Bar of Arizona.
- 13 6. On August 8, 2005, Jim Wilburn ("Mr. Wilburn") responded to the State Bar of Arizona,
14 after receiving a second letter, by stating, in pertinent part, that GWS is not a law firm and is
15 solely an asset recovery company.
- 16 7. On October 25, 2005, the State Bar of Arizona sent a facsimile to the Department that
17 contained the following:
 - 18 a. a July 28, 2004 solicitation letter "from the offices of GWS" signed by Steve
19 Rodgers, Vice President, GWS, sent to Julia Mae Wardlaw for the estate of Julie
20 Mae Wardlaw whereby GWS states that they specialize in helping individuals
21 find and collect money owed to them in as little as 60 days. The collection
22 amount of this solicitation letter is \$21,398.30;
 - 23 b. a July 28, 2004 "Letter of Authorization to Recover Funds" in the amount of
24 \$21,398.30 sent to Julia Mae Wardlaw involving the estate of Julie Mae Wardlaw
25 "from the offices of GWS" whereby GWS states that they will act as attorney-in-
26 fact on behalf of Julia Mae Wardlaw;

- 1 c. a July 28, 2004 "Agreement and Fee Memorandum" sent to Julia Mae Wardlaw
2 whereby "the client" shall pay GWS, upon the collection of funds, thirty three
3 percent (33%) of \$21,398.30 within thirty (30) days. GWS also states that it will
4 bear all costs associated with the collection of said funds; and
- 5 d. an August 8, 2005 response letter written by Mr. Wilburn and sent to the State
6 Bar of Arizona indicating that GWS is solely an asset recovery company;
- 7 8. On October 26, 2005, the Department accessed www.gwsllc.com, which is GWS' website.
8 GWS' website advertises in Arizona that GWS:
- 9 a. specializes, among other things, in the collection of unclaimed assets;
10 b. pays all costs associated with the collection of the identified assets; and
11 c. is by far, one of the nations leading providers of asset recovery services;
- 12 9. On November 2, 2005, the Department sent a letter to GWS at its primary Tucson, AZ
13 address indicating that the Department has reason to believe that GWS violated or is
14 violating applicable Arizona laws and/or rules and is engaging or has engaged in the
15 operation of a collection agency without the benefit of a license pursuant to A.R.S. § 32-
16 1055(A). The Department gave GWS an opportunity to respond by November 7, 2005.
- 17 10. On November 8, 2005, the Department received its November 2, 2005 letter returned from
18 the U.S. Post Office and marked "Attempted, Not Known";
- 19 11. On November 9, 2005, the Department sent a facsimile to GWS at its South Carolina office.
20 The facsimile contained the same information enunciated in the November 2, 2005 letter
21 with the addition of a request to respond to the Department by November 19, 2005;
- 22 12. To date, GWS: has not provided a written response to the Department; has failed to respond
23 the Department's requests for information; and has failed to request or apply for a collection
24 agency license through the Department; and
- 25 13. Respondents were not, at any time material herein, authorized to transact business in Arizona
26 as a collection agency within the meaning of A.R.S. §§ 32-1001 *et seq.*

1 **CONCLUSIONS OF LAW**

- 2 1. Pursuant to A.R.S. Title 6, Chapter 12 and Title 32, Chapter 9, the Superintendent has the
3 authority and duty to regulate all persons engaged in the collection agency business and with
4 the enforcement of statutes, rules, and regulations relating to collection agencies.
- 5 2. By the conduct set forth in the Findings of Fact, GWS and Mr. Pendergrass violated the
6 following:
- 7 a. A.R.S. § 32-1021(A) by failing to make an original application to the department
8 upon forms prescribed by the superintendent; and
- 9 b. A.R.S. § 32-1055(A) by conducting collection agency activity in Arizona without
10 having first applied for and obtained a license.
- 11 3. GWS and Mr. Pendergrass are not exempt from licensure as a collection agency within the
12 meaning of A.R.S. § 32-1004(A).
- 13 4. The violations of applicable laws, set forth above, constitute grounds for: (1) the issuance of
14 an order pursuant to A.R.S. § 6-137 directing Respondents to cease and desist from the
15 violative conduct and to take the appropriate affirmative actions, within a reasonable period
16 of time prescribed by the Superintendent, to correct the conditions resulting from the
17 unlawful acts, practices, and transactions, and (2) the imposition of a monetary civil penalty
18 pursuant to A.R.S. § 6-132.

19 **ORDER**

- 20 1. GWS and Mr. Pendergrass shall immediately stop the violations set forth in the
21 Findings of Fact and Conclusions of Law. GWS and Mr. Pendergrass:
- 22 a. shall immediately stop all collection agency activity in Arizona.
- 23 2. Guishard, Wilburn & Shorts, L.L.C. and Mr. Pendergrass shall immediately pay to
24 the Department a civil money penalty in the amount of ten thousand dollars (\$10,000.00). Guishard,
25 Wilburn & Shorts, L.L.C. and Mr. Pendergrass are jointly and severally liable for payment of the
26 civil money penalty.

3. The provisions of this Order shall be binding upon Respondents, their employees, agents, and other persons participating in the conduct of the affairs of Respondents.

4. This Order shall become effective upon service, and shall remain effective and enforceable until such time as, and except to the extent that, it shall be stayed, modified, terminated, or set aside.

SO ORDERED this 9th day of March, 2006.

By Felecia Rotellini
Felecia A. Rotellini
Superintendent of Financial Institutions

CONSENT TO ENTRY OF ORDER

1. Respondents acknowledge that they have been served with a copy of the foregoing Findings of Fact, Conclusions of Law, and Order in the above-referenced matter, have read the same, are aware of their right to an administrative hearing in this matter, and have waived the same.

2. Respondents admit the jurisdiction of the Superintendent and consent to the entry of the foregoing Findings of Fact, Conclusions of Law, and Order.

3. Respondents state that no promise of any kind or nature has been made to induce them to consent to the entry of this Order, and that they have done so voluntarily.

4. Respondents agree to cease from engaging in the violative conduct set forth above in the Findings of Fact and Conclusions of Law.

5. Respondents acknowledge that the acceptance of this Agreement by the Superintendent is solely to settle this matter and does not preclude this Department, any other agency or officer of this state or subdivision thereof from instituting other proceedings as may be appropriate now or in the future.

6. Mr. Allen Pendergrass on behalf of Guishard, Wilburn & Shorts, L.L.C., and himself,

1 represents that he is the President, and that, as such, has been authorized by Guishard, Wilburn &
2 Shorts, L.L.C. to consent to the entry of this Order on its behalf.

3 7. Respondents waive all rights to seek judicial review or otherwise to challenge or
4 contest the validity of this Cease and Desist Order.

5 DATED this _____ day of _____, 2006.

6
7 By: _____
Allen Pendergrass, President, Guishard, Wilburn &
Shorts, L.L.C.

8 ORIGINAL of the foregoing filed this 9th
9 day of March, 2006, in the office of:

10 Felecia A. Rotellini
11 Superintendent of Financial Institutions
Arizona Department of Financial Institutions
ATTN: June Beckwith
12 2910 N. 44th Street, Suite 310
Phoenix, AZ 85018

13 COPY mailed/delivered same date to:

14 Craig A. Raby
15 Assistant Attorney General
Office of the Attorney General
16 1275 West Washington
Phoenix, AZ 85007

17 Richard Fergus, Licensing Manager
18 Richard Traveler, Senior Examiner
Arizona Department of Financial Institutions
19 2910 N. 44th Street, Suite 310
Phoenix, AZ 85018

20 AND COPY MAILED SAME DATE by
21 Certified Mail, Return Receipt Requested, to:

22 Allen Pendergrass, President
Guishard, Wilburn & Shorts, L.L.C.
23 175 Carnegie Place, Suite 115
Fayetteville, GA 30214

24
25 By: Pamela Cantor
26